

- (a) projects or programs currently or previously sponsored by the same State Department/Division;
- (b) projects or programs currently or previously sponsored by other State Departments.

If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the State Government, provided such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by the same contracting Division.

When the recipient can no longer use the equipment it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the State Government which the recipient is supporting through subcontracts or through non-State contracts. If the recipient is a subcontractor, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the State Government which are being conducted or supported by the agency.

Unless the Division provided otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

- (5) Replacement of Equipment. Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

If an additional outlay to acquire the replacement equipment is charged as a direct cost to the contract, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that contract.

For any replacement not covered by the paragraph above, the provisions of these Property Management Standards applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of these Property Management Standards shall carry over if (i) the State share of the equipment replaced was 10 percent or less or (ii) the product of that share times the amount received for trade-in or sale is \$100 or less.

- (6) Disposition of Equipment. When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the State government, disposition of the equipment shall be made as follows:

- (a) Equipment with a unit acquisition cost of less than \$1,000 and equipment with no further use value may be retained, sold, or otherwise disposed of, with no further obligation to the State government.
 - (b) All Other Equipment. (i) The equipment may be retained or sold, and the State government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the State share of the equipment. If the equipment is sold, \$100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses. (ii) If the agency's project or program for which funds or under which the equipment was acquired is still receiving funds from the same Division program and if the Division approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the Division by check.
- (7) Equipment Management Requirements. Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:
- (a) Property records shall be maintained accurately. For each item of equipment, the records shall include:
 - 1. A description of the equipment, including manufacturer's model number, if any;
 - 2. An identification number, such as the manufacturer's serial number, if any;
 - 3. Identification of the contract under which the recipient acquired the equipment;
 - 4. The information needed to calculate the State share of the equipment. (See State share of Real Property, Equipment, and Supplies, below.)
 - 5. Acquisition date and unit acquisition cost;
 - 6. Location, use, and condition of the equipment and the date the information was reported;
 - 7. All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

- (b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.
 - (c) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.
 - (d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.
 - (e) Where equipment is to be sold and the State government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.
- (8) Supplies. If supplies exceeding \$1,000 in total aggregate market value are left over upon termination or expiration of the contract for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the State government, the contract shall be credited by an amount computed by multiplying the State share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

STATE SHARE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES

Several parts of these Property Management Standards require a determination of the State or non-State share of real property, equipment or supplies. In making such a determination, the following principles shall be observed:

- (1) General. (a) Except as explained in the following paragraphs of this section, the State share of the property shall be the same percentage as the State share of the acquiring party's total costs under the contract during the contract years (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "cost under the contract" means allowable costs which are borne by the contract. Only costs incurred are to be counted (not the value of third party in-kind contributions). Moreover, if the property was acquired by an agency that awarded subcontracts, costs incurred by its subcontractors shall be included only to the extent borne by the subcontracts. For example, if a subcontractor incurred \$200,000 of project costs, of which \$150,000 was borne by the subcontract, only the \$150,000 shall be included in the agency's costs.

- (b) If the property is acquired by a subcontractor, the State share of the subcontractor's costs under the contract and hence of the property shall be calculated by multiplying the State share of the agency's costs by the latter's share of the subcontractor's costs. For example, if the State share of an agency's costs is 50 percent and the subcontract bears only 50 percent of a subcontractor's costs, then the State share of that subcontractor's costs (and of the property acquired by that subcontractor) is 25 percent.
- (2) Property Acquired Only Partly Under A Contract. (a) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the contract. The remainder might, for example, represent voluntary cost sharing or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.
- (b) To calculate the State share of such property, first determine the State share of the acquiring party's total costs under the contract, explained in the paragraph (1) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the contract.
- (3) Replacement equipment. The State share of replacement equipment shall be calculated as follows:
- (a) Step 1. Determine the State share (percentage) of the equipment replaced.
- (b) Step 2. Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.
- (c) Step 3. Multiply the Step 1 percentage by the Step 2 percentage.
- (d) If an additional outlay for the replacement equipment was charged as a direct cost to the contract calculate the State share attributable to that additional outlay as explained in paragraph (2) (b) of this section. Add that additional percentage to the Step 3 percentage.

4.4 PROCUREMENT STANDARDS

This section contains standards for use by agencies in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by State contract funds.

No additional procurement standards or requirements shall be imposed by the Department/Division unless specifically required by Federal or State statutes or Executive Orders.

The following definitions are provided as used in this section:

- (1) Formal advertising - A procurement method which involves adequate purchase description, sealed bids, and public opening of bids.
- (2) Negotiation - Any method of procurement other than formal advertising.

Agencies may use their own procurement policies, provided the procurements are made in accordance with the standards in this section.

The standards in this section do not relieve the agency of the contractual responsibilities arising under its contracts. The agency is the responsible authority, without recourse to the Division, regarding issues arising out of its procurements. This includes but is not limited to disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such Local, State, or Federal authority as may have proper jurisdiction.

CODE OF CONDUCT

- (1) The agency shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this section. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the agency's officers, employees or agents. For governmental agencies such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental agency shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.
- (2) The agency's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

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- (3) No employee, officer, or agency of a nongovernmental agency shall participate in the selection, award or administration of a contract subject to this section where, to his or her knowledge, any of the following has a financial interest in that contract:
- (a) the employee, officer, or agent;
 - (b) any member of his or her immediate family;
 - (c) his or her partner;
 - (d) an organization in which any of the above is an officer, director, or employee;
 - (e) a person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

FREE COMPETITION

- (1) All procurement transactions shall be conducted in a manner to provide to the maximum extent practicable, open and free competition.
- (2) The agency should be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental agency should be excluded from competing for that procurement except when, upon request of the agency, the Division waives this requirement for a particular procurement.
- (3) Solicitations shall clearly set forth all requirements that the bidder/officer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/officer whose bid/offer is responsive to the solicitation and is most advantageous to the agency, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the agency's interest to do so, and in the case of governmental agency such rejections are in accordance with the government's applicable laws, rules, or regulations.

PROCEDURAL REQUIREMENTS

The agency shall establish procurement procedures which at a minimum provide for the following:

- (1) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical procurement.

- (2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offers should be clearly specified.
- (3) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.
- (4) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to these procurement standards.
- (5) The type of procuring instruments used (e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts) shall be determined by the agency but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.
- (6) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- (7) The terms of the agency contract may require that the following be submitted for prior approval of the Division if the aggregate expenditure is expected to exceed \$5,000: (1) any proposed sole source subcontract and (2) any subcontract which a non-governmental agency proposes to award after seeking competition but receiving only one bid or proposal.
- (8) Non-governmental agencies should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offerer to determine reasonableness, allocability and allowability.
- (9) Procurement records and files for purchases in excess of \$10,000 shall include the following:
 - (a) basis for contractor selection;
 - (b) justification for lack of competition when competitive bids or offers are not obtained;

- (c) basis for award cost or price.
- (10) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

REQUIREMENTS FOR GOVERNMENTAL PROVIDER AGENCIES TO USE FORMAL ADVERTISING

- (1) Except as provided in paragraph (2) of this section, in making procurements that are subject to these procurement standards, governmental agencies shall use formal advertising.
- (2) Procurements may be negotiated if it is not feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:
 - (a) The public exigency will not permit the delay incident to advertising.
 - (b) The material or service to be procured is available from only one person or firm.
 - (c) The aggregate amount involved does not exceed \$10,000.
 - (d) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.
 - (e) The material or services are to be procured and used outside the limits of the United States and its possessions.
 - (f) No acceptable bids have been received after formal advertising.
 - (g) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture.
 - (h) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable laws, rules, or regulations.
- (3) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

- (4) For every negotiated procurement in excess of \$10,000 by a governmental agency, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required under procedural requirements paragraph (2) above. The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

CONTRACT PROVISIONS

- (1) Scope. This section contains requirements relating to provisions that must be included in contracts that are subject to these procurement standards. The requirements shall also apply to subcontracts of any tier under contracts, and the term "contracts" in this section shall be construed as including subcontracts.
- (2) General. All contracts shall contain sufficient provisions to define a sound and complete agreement.
- (3) Administrative Remedies for Violations. Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.
- (4) Termination Provisions. Contracts in excess of \$10,000 shall contain suitable provisions for termination by the party awarding the contract, including the matter by which termination will be affected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (5) E.O. 11246. Where applicable, construction contracts in excess of \$10,000 shall contain a provision requiring compliance with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- (6) Copeland Act. Contracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the Division by the agency.
- (7) Davis-Bacon Act. When required by the Federal legislation governing the contract program, all construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the Division by the agency.

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- (8) Contract Work Hours and Safety Standards Act. All contracts subject to the Contract Work and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).
- (9) Access to Records. Contracts shall include a provision reflecting the rights of access to the contractor's records as contained in the "Retention and Access Requirements for Records" section of this Manual.
- (10) Clean Air and Water Act. Contracts in excess of \$100,000 shall contain provisions requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the Environmental Protection Agency and a copy of the report shall be submitted to the Division. (See Title 40 - Code of Federal Regulations, Part 15 for relevant regulations of the Environmental Protection Agency.)